NTSB Order No.
EM-41

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D. C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D. C.
on the 5th day of March 1975.

CHESTER R. BENDER, Commandant, United States Coast Guard,

vs.

JOHN RICHARD CHRISTEN, Appellant.

Docket ME-39

OPINION AND ORDER

The appellant, John Richard Christen, has appealed from the decision of the Commandant affirming the revocation of his seaman's documents for misconduct aboard ship.[1] At the time in question, appellant was the holder of Merchant Mariner's Document No. Z-1071587-D3 and was serving, under authority thereof, as a messman aboard the SS AMERICAN CORSAIR, a United States merchant vessel.[2]

Appellant's prior appeal to the Commandant (Appeal No. 1985) was from the initial decision of Administrative Law Judge Jerry W. Mitchell.[3] The law judge found that on January 14, 1971, while the vessel was docked at Subic Bay, Philippines, appellant wrongfully(1) failed to perform his duties in the messhall because he was intoxicated; (2) set fire to the mattress of his roommate, a pantryman, while the latter was sleeping on it; (3) threatened to blow up the vessel; and (4) lighted matches on the main deck, knowing that the vessel's cargo was military explosives. Of these findings, the first offense, occurring at the breakfast hour, was deemed minor. The others were considered "unusually serious" and found to have taken place in the early afternoon when appellant was

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[1]Admiral Owen W. Siler has succeeded to the Office of Commandant, United States Coast Guard, during the pendency of this appeal.

[2]The revocation action was taken pursuant to 46 U.S.C. 239(g). This appeal therefrom is authorized by 49 U.S.C. 1654(b)(2).

[3]Copies of the decisions of the Commandant and the law judge (then acting as "hearing examiner") are attached thereto.

"not drunk although he had been drinking and was acting drunk at times." The law judge predicated his findings on testimony received from three of appellant's fellow crewmembers, including the pantryman, at the second session of appellant's hearing held at Wilmington, North Carolina, on March 2, 1971. Appellant failed to attend this session and was not represented therein although he had appeared, with counsel, at the preliminary session in San Francisco, California, and thereafter, through his counsel, requested the change of venue. Throughout the appeal process, he has been represented by a different counsel.

In his brief on appeal, appellant contends that the evidentiary hearing was held without his knowledge, thereby denying him due process and requiring that his case be remanded for a new hearing. In support thereof, he asserts that his attorney in San Francisco "did not inform him of the hearing time and place"; the Commandant made a factual error in determine that "appellant well knew...the proper venue"; and that "personal service of the notice of trial" on him was lacking. He also maintains "a strong belief in" his innocence and desire to defend himself.[4] Counsel for the Commandant has filed a reply brief opposing the requested relief.

Upon consideration of the parties briefs and the entire record, the Board has concluded that the hearing in absentia was properly authorized, and that the findings of the law judge are supported by reliable, probative, and substantial evidence. In addition to our further findings herein, we adopt those of the law judge as our own. Moreover, we agree that the sanction is warranted under 46 U.S.C. 239(g).

It clearly appears that appellant made himself amenable to service of process by the Coast Guard at San Francisco, on February 9, 1971, and requested that his hearing be scheduled then and there (Tr. 6, 17). It is also apparent that appellant was ready to proceed at that time only because he had been discharged by the master at Subic Bay (Tr. 11) and was repatriated, whereas the vessel had proceeded on its voyage to the Far East and was still engaged thereon. Since the shipboard witnesses to be called by the Coast Guard were unavailable until the vessel returned to an American port, the presiding law judge continued the hearing "on notice", instructing the Coast Guard to keep appellants counsel apprised of the vessel's schedule. By the end of the ensuing week, on February 17, counsel was advised that the vessel would arrive at

[4]Appellant has also requested oral argument before the Board. Absent a showing of good cause therefor by him, the request is denied under 14 CFR 425.25(b) of the Board's regulations governing this appeal.

Sunny Point, North Carolina, on the 28th of the month.

Appellant's counsel promptly requested that the case be transferred to that area for trial, which is within the 5th Coast Guard District, at Portsmouth, Virginia. Counsel then advised the law judge by letter, on February 25, that appellant had "left for Portsmouth and was to report to the United States Coast Guard there so that this matter may be heard when the vessel is in that vicinity..." Acting on these assurances, the law judge issued the order for a change of venue on the following date, which required appellant to report immediately to the law judge at Portsmouth.[5]

Finally, the record discloses that appellant took no action whatsoever to comply with the foregoing order until December 1971, some 10 months later. By this time, not only was his hearing concluded and the witnesses dispersed but the initial decision had already been issued. Neither at that late stage nor here has appellant offered any explanation to account for his abrupt departure from San Francisco without waiting for the final determination of his pending request on venue, or for his prolonged disappearance thereafter. Nor is there any showing with regard to what subsequent communication, if any, he received from counsel. For that matter, he has not shown that the possibility existed for counsel to notify him of the change of venue, since he does not even claim that counsel knew his forwarding address or where to reach him. Under these circumstances, we have no reason to shift the responsibility for appellant's inaction to the attorney representing him at that time.

Appellant's reliance on due process is also unfounded. Once he had entered his appearance in response to the original service of process, there was no further requirement to rediscover his whereabouts as to serve him with formal notice for a second time. Rather, we hold that service of the order for change of venue upon appellant's attorney of record was sufficient notification to appellant.[6] Indeed, appellant offers nothing to refute this or the clear indications in the attorney's letter to the law judge that appellant was assuming the obligation of reporting to the Coast Guard at Portsmouth on his own, and was fully aware that the situs and timing of his reconvened hearing would coincide with the

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[5] No issue is taken with the rulings of this law judge in granting the continuance or ordering the change of venue. In our opinion, upon review of the record, he exercised a sound discretion in both instances. 46 CFR 137. 20-10.

[6] 7 C.J.S. Attorney and Client § 80-85.

vessels arrival at Sunny Point.[7] Accordingly, we find that appellant, by his own inaction, deprived himself of the opportunity to be heard. Lacking any showing to the contrary, there is no justification for a rehearing.

Appellant has supplemented his brief by filing certain documents, not previously of record, which pertain to the period following his removal from the vessel at Subic Bay. We find that these documents are extraneous to the issues in this case, excepting one which purports to be appellant's statement under oath to an American consul in Manila, on January 25, 1971. The extent to which it is relevant is confined to the introductory section wherein appellant states that his roommate set the fire after they had an argument and, when other crewmembers had assembled, the roommate told them that appellant had started it. The other incidents are not mentioned.

In our view, there is nothing in this self-serving declaration to buttress appellant's assertion of innocence, weighed against his roomate's testimony as corroborated by two other witnesses who earlier had observed appellant lighting and throwing matches on the main deck while threatening to blow up the ship (Tr. 15, 29), and then going into the "midship house" where the galley and galley personnel quarters were located. Within a few moments, one of the latter witnesses smelled smoke and traced it to appellant's room. Inside, he found that a "fire was burning on the foot of the bunk and Christen was sitting on the chair right opposite...watching the fire burn...he said he was going to burn that Maltese" (Tr. 16).[8] The roommate testified that as he was falling asleep he felt heat on his leg; he awoke to find that a fire had been started with papers on his bunk, and the only other person in his room was appellant, sitting in the chair at first and then getting up to threaten him, saying "If you touch it, I'll kill you." At that point, the roommate left to report appellant's action to the chief steward (Tr. 39).

Each of these witnesses testified to the various aspects of

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[7] We agree with appellant's argument that the letter from his present counsel to the law judge at Portsmouth in December 1971 is an unsufficient basis for reaching this conclusion in the Commandant's decision. However, the earlier letter, in our view, allows us to draw the inference that appellant had knowledge of the proper venue when he left San Francisco.

[8] This witness also testified that appellant had previously referred to the pantryman as "the Maltese," as had others in the crew, because he was from Malta (Tr. 18).

appellant's activities which they observed. Taken together, we find that a continuing pattern of disorderly conduct by appellant, culminating in his setting the fire, was established. We agree with the conclusion of the law judge that the fire-setting and match-lighting incidents "greatly endagered" life and property and that appellant has demonstrated by these actions that he is incapable of controlling such behavior in the future. It is apparent to us that he would continually threaten safety at sea if assigned to other vessels and that he should be removed from the shipboard environment.

ACCORDINGLY, IT IS ORDERED THAT:

1. The instant appeal be and it hereby is denied; and

2. The order of the Commandant affirming the revocation of appellant's seaman's documents under authority of 46 U.S.C. 239(g) be and it hereby is affirmed